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SUBJECT: HONDURAS NATIONAL TRADE ESTIMATE REPORT 2003

REF: SECSTATE 225281

1. The text of the 2003 National Trade Estimate report for Honduras follows.

#### TRADE SUMMARY

2. (Note that the following paragraph to be updated by Washington with USDOC statistics). In 2001, the U.S. trade deficit with Honduras was \$690 million, an increase of \$183 million from the U.S. trade deficit of \$506 million in 2000. U.S. goods exports to Honduras were \$2.4 billion, a decrease of \$147 million (5.7 percent) from the level of U.S. exports to Honduras in 2000. Honduras was the United States' 40th largest export market in 2001. U.S. imports from Honduras were \$3.1 billion in 2001, an increase of \$36 million (1.2 percent) from the level of imports in 2000.

3. (We also understand that this paragraph will also be updated with USDOC statistics). The stock of U.S. foreign direct investment (FDI) in Honduras in 2000 amounted to \$115 million, a decrease of 8.7 percent from the level of U.S. FDI in 1999. U.S. FDI is concentrated largely in the manufacturing sector.

#### IMPORT POLICIES

##### Tariffs

4. In 1995, Honduras and other members of the Central American Common Market (CACM) agreed to reduce and harmonize the common external tariff (CET) at zero to 15 percent, but allowed each member to determine the timing of the reductions. Honduras has reduced its tariffs to one percent on capital goods, medicines, agricultural inputs, and raw materials for those imports produced outside of the CACM. Tariffs on non-CACM final goods were reduced to 16 percent on December 31, 2000. Honduras intends to reduce its non-CACM external tariffs for other goods (intermediate and finished) over the next several years to between 10 percent and 15 percent. Per the tax reform law of June 2002, import tariffs on cars were reduced from 40 percent to 15 percent ad valorem. Vehicles older than seven years are no longer allowed entry to Honduras.

##### Non-tariff Measures

5. Honduras was obligated to implement the WTO Customs Valuation Agreement on January 1, 2000. WTO records show that Honduras has not yet notified its legislation nor the Customs Valuation Checklist to the WTO Committee on Customs Valuation. In November 1999, the WTO Committee on Customs Valuation granted Honduras' request to use minimum values for certain used clothing products until January 1, 2002, and for certain tires, appliances, and used vehicles until January 2, 2003.

6. Honduras implements a price band mechanism for imports of yellow corn, sorghum, and corn meal. This price band is calculated from a time series of international prices on a given product for the prior 60 months. The 15 highest and lowest monthly prices are eliminated, with the remaining highs and lows establishing the price band. Imports entering with values within the defined band are assessed a 20 percent tariff. Imports entering with prices above the band are assessed duties at a rate lower than 20 percent, according to a predetermined schedule; those imports priced below the band are assessed a tariff higher than 20 percent. However, the government also maintains a seasonal restriction on the price band. From September to January the minimum allowable duty is 20 percent for corn and 15 percent for cornmeal and sorghum. From February to August, duties are allowed to fluctuate according to the predetermined duty tables for each commodity. This seasonal restriction has been added to provide additional protection to local grain farmers during the main harvest season. In addition to the above, the Government of Honduras, farm groups, and importers have agreed to a quasi-tariff-rate quota in which the price band remains in effect until local grain supplies are exhausted, after which a one percent duty is applied to imports. The United States has strongly opposed the Honduran policies on corn and sorghum as limiting access for U.S. agricultural products.

#### STANDARDS, TESTING, LABELING AND CERTIFICATION

17. Honduras has had a ban on U.S. raw poultry imports for some time. USDA FAS estimates that if Honduran restrictions on U.S. raw poultry and poultry parts were lifted, U.S. producers could export an additional USD 10 million of poultry products to Honduras, annually. The Embassy has received a series of complaints in 2002 from local importers regarding import restrictions, difficult certification requirements and other obstacles to the importation of U.S. pork, poultry and dairy products. Honduran food safety officials have restricted the imports of U.S. chicken and pork products citing sanitary concerns. Local importers charge that Honduran officials are using sanitary and phyto-sanitary measures to block U.S. imports to protect local producers and in some cases to promote diversion of trade to other Central American countries. Changes in sanitary and phyto-sanitary requirements are seldom reported to the WTO as required, and create uncertainty among U.S. suppliers and Honduran importers. The Honduran government requires that sanitary permits be obtained for all imported foodstuffs.

#### GOVERNMENT PROCUREMENT

18. Under the new State Contracting Law, which entered into force in October 2001, all public works contracts over \$63,000 must be offered through public competitive bidding. Public contracts between \$31,000 and \$63,000 can be offered through a private bid and contracts less than \$31,000 are exempt from the bidding process. To participate in public tenders, foreign firms are required to act through a local agent. Local agency firms must be at least 51 percent Honduran-owned, unless the procurement is linked to a national emergency. While foreign firms are granted national treatment for public bids, some still complain of mismanagement and lack of transparency in the bid processes. Government purchases and project acquisitions are generally exempted from import duties.

19. Honduras is not a signatory of the WTO Government Procurement Agreement. In the past, the United States has raised concerns regarding Honduras' lack of cooperation in the WTO Working Party on Transparency in Government Procurement. In recognition of increased cooperation in the WTO Working Party on Transparency in Government Procurement, the United States reinstated a waiver of "Buy America Act" provisions in 2002 which had previously been suspended for Honduras.

#### INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

110. Honduras largely has complied with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), through legal revisions enacted in December 1999. The Honduran Congress still must, for instance, adopt reforms related to integrated circuit designs and plant variety protection to be in full compliance with TRIPS.

111. Honduras and the U.S. initialed a Bilateral Intellectual Property Rights (IPR) Agreement in March 1999. Final signature of this agreement is still pending. Honduras became a member of the World Intellectual Property Organization (WIPO) in 1983.

#### Copyrights

112. Honduras' copyright law, updated in 1999, added more than 20 different criminal offenses related to copyright infringement and established fines and suspension of services that can be levied against offenders. The piracy of books, sound and video recordings, compact discs, and computer software is still widespread in Honduras, however, due in part to limited enforcement capacity. U.S. companies are concerned that recent attempts to prosecute computer software infringement cases have been met with resistance by officials in the Ministry of Industry and Trade's IPR Division and the Attorney General's office.

#### Patents and Trademarks

113. Honduras ratified the Paris Convention for the Protection of Industrial Property in 1994. The Honduran Congress enacted a 1999 Law of Industrial Property to provide improved protection for both trademarks and patents. To be protected under Honduran law, patents and trademarks must be registered with the Ministry of Industry and Trade.

114. Recent modifications to the Patent Law of 1993 include patent protection for pharmaceuticals, and extend the term of protection for a patent from seventeen to twenty years from the date of filing to meet WTO standards. The term for cancellation of a trademark for lack of use has been extended from one year to three years. Trademarks are valid for up to 10 years from the registration date. The illegitimate registration of well-known trademarks has, however, been a persistent problem in Honduras.

115. A U.S. pharmaceutical company has complained that the Ministry of Health, in approving a competing company's pharmaceutical product, did not respect their data exclusivity rights as guaranteed in article 77 of Honduras' Industrial Property Law and article 39 of the WTO TRIP's agreement. The Ministry of Health approved the competing pharmaceutical product, despite communication from Honduras' IPR Division that the U.S.

company's research and data were protected under Honduran law. The U.S. company argues that in order for the competing product to be legally registered with the Ministry of Health, the company needs to provide the research and data to support their application. Honduran law provides five-year exclusive use of data provided in support of registering pharmaceutical products.

#### SERVICES BARRIERS

16. Special government authorization must be obtained to invest in the tourism, hotel and banking services sectors. Foreigners may not hold a seat in Honduras' two stock exchanges or provide direct brokerage services in these exchanges. Honduran professional bodies heavily regulate the licensing of foreigners to practice law, medicine, engineering, accounting, and other professions.

#### INVESTMENT BARRIERS

17. The Constitution of Honduras requires that all foreign investment complement, but not substitute for, national investment. Companies that wish to take advantage of the Agrarian Reform Law; engage in commercial fishing, forestry, or local transportation activities; serve as representatives, agents, or distributors for foreign companies; or operate radio and television stations must be majority-owned by Hondurans. Government authorization is required for both foreign and domestic investors in basic health services; telecommunications; generation, transmission, and distribution of electricity; air transport; and mining.

18. In addition, special government authorization is required for foreign investment in the following sectors: forestry, telecommunications, basic health, air transport, fishing and aquaculture, mining, insurance and financial services, private education, and those agricultural and agro-industrial activities exceeding land tenancy limits established by law.

19. Small-scale commercial and industrial activities with an investment less than 150,000 lempiras (about \$9,000), excluding land, buildings, and vehicles, are reserved exclusively for Honduran nationals. For all investments, at least 90 percent of a company's labor force must be Honduran, and at least 80 percent of the payroll must be paid to Hondurans.

20. Foreign ownership of land within 40 km of the coastlines and national boundaries is constitutionally prohibited, though tourism investment laws allow for certain exceptions. Inadequate land title procedures have led to numerous investment disputes involving U.S.-citizen landowners.

21. Historically, U.S. firms and private citizens have found corruption to be a problem and a constraint on foreign direct investment. Corruption appears to be most pervasive in the following areas: government procurement, performance requirements, the regulatory system, and the buying and selling of real estate, particularly land title transfers. Honduras' judicial system is easily influenced; investment and business disputes involving foreigners have rarely been resolved in a transparent manner. In 2002, however, the Honduran Supreme Court, the appeals court and the executive branch have looked into some of these specific problems and been helpful in pushing delayed cases toward resolution. The Honduran government also has plans to submit a small number of land expropriation cases to arbitration.

22. On July 12, 2001, a Bilateral Investment Treaty (BIT) between the U.S. and Honduras entered into force. The treaty provides for equal protection under the law for U.S. investors in Honduras and permits expropriation only in accordance with international legal standards and accompanied by adequate compensation. U.S. investors in Honduras also have the right to submit an investment dispute to binding international arbitration. Honduras has taken the following limited exceptions to its BIT national treatment obligation: properties on cays, reefs, rocks, shoals or sandbanks or on islands or on any property located within 40 km of the coastline or land borders of Honduras; small scale industry and commerce with total invested capital of no more than \$40,000 or its equivalent in national currency; ownership, operation and editorial control of broadcast radio and television; ownership, operation and editorial control of general interest periodicals and newspapers published in Honduras.

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